

REMARKS

In light of the above amendments and remarks to follow, reconsideration and allowance of this application are respectfully requested.

Claims 1 and 7 have been amended. New claim 21 has been added. Claims 1-4, 7, 9-10 and 12-21 are pending.

Claims 1-2, 7, 9-10, 12-14 and 18-19 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent Pubn. 2003/01792930 ("Kullik"). In addition, claims 3-4 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Kullik in view of U.S. Patent Pubn. No. 2003/0066527 ("Chen"); claims 15-17 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Kullik in view of U.S. Patent No. 6,050,262 ("Jay"); and claim 20 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Kullik in view of U.S. Patent No. 6,467,477 ("Frank").

Independent claim 1, as amended, is directed to a breathing assistance device including, in relevant part, a gas source which is a ventilator, and a removable module removably connectable to a breathing connection, where the removable module comprises a first part and a second part. (See specification, for example, at pg. 8, ln. 5-10). Also, claim 1 recites that the ventilator is integrated into the first part of the removable module, and at least one sensor for acquiring a parameter representative of operation of the device "is contained in the second part of the removable module at a position downstream of the first part of the removable module." (See specification, for example, at pg. 8, ln. 5-9 and 17-21, and pg. 10, ln. 1-4 and 13-17). Advantageously, the sensor, which is in the second part of the removable module, is at a position downstream of the first part

of the removable module, into which the ventilator is integrated, thereby providing that heat released by the ventilator may reheat respiratory gas passing into the sensor to effectively prevent condensation of the gas near the sensors. (See specification, for example, at pg. 14, ln. 12-16).

The applied portions of Kullik do not appear to disclose positioning a sensor within the second part of the removable module at a position downstream of the first part of the removable module into which a ventilator is integrated, as required by the claimed invention. In contrast to the Examiner's statements (see Office Action, pg. 6), with respect to the use of the term "optionally," in the first sentence of paragraph [0018] of Kullik, it is respectfully submitted that a proper reading of the first sentence of paragraph [0018] appears to be that flow sensor 10 may optionally be provided in the Kullik device, not that the sensor 10 is a required part of the device and optionally may be positioned within the breathing mask. In other words, Kullik discloses that, in the optional case where a flow sensor is provided in the device, then such flow sensor is located in the breathing mask. As discussed in the previous response, Figure 2 of Kullik is a schematic view that does not specifically identify the position of the sensor 10, and one skilled in the art, based on Figure 2 and the specification of Kullik, is not taught that the flow sensor of Kullik may be located within the removable module at a position downstream of the ventilator.

Furthermore, nowhere does Kullik appear to disclose providing a sensor in a specific part of the removable module and, in particular, in a part of the removable module at a position downstream of another distinct part of the removable module including the ventilator. Referring to Figure 1 of Kullik, the

module of Kullik appears to include two separate parts, where it appears from Figure 2 that a first part includes a filter (7) and a second part includes the ventilator (3). Assuming that the sensor (10) is provided in the removable module of Kullik as stated by the Examiner, then (referring to Figure 2 of Kullik) such sensor (10) would appear to be located in the same part of the removable module as the ventilator and, thus, not at a position downstream of the ventilator, as required by the claimed invention. Thus, Kullik does not appear to disclose or suggest a breathing assistance device having a sensor contained in a second part of a removable module at a position downstream of a first part of the removable module into which a ventilator is integrated, as required by claim 1.

Accordingly, independent claim 1 is patentable over Kullik for at least the above reasons.

Claims 2, 7, 9-10, 12-14 and 18-19 depend from claim 1. Accordingly, it is also respectfully submitted that dependent claims 2, 7, 9-10, 12-14 and 18-19 are distinguishable from Kullik as applied by the Examiner for at least the reasons previously described for claim 1, and also because of the additional restrictions they require.

Claims 3-4 depend from claim 1. Accordingly, it is also respectfully submitted that dependent claims 3-4 are distinguishable from Kullik as applied by the Examiner for at least the reasons previously described. In addition, the Examiner does not appear to rely on Chen to overcome the above-described deficiencies of Kullik. Accordingly, it is also respectfully submitted that dependent claims 3-4 are distinguishable from the combination of Kullik and Chen applied by the Examiner, for at least the reasons previously described.

Claims 15-17 depend from claim 1. Accordingly, it is also respectfully submitted that dependent claims 15-17 are distinguishable from Kullik as applied by the Examiner for at least the reasons previously described. In addition, the Examiner does not appear to rely on Jay to overcome the above-described deficiencies of Kullik. Accordingly, it is also respectfully submitted that dependent claims 15-17 are distinguishable from the combination of Kullik and Jay applied by the Examiner, for at least the reasons previously described.

Claim 20 depends from claim 1. Accordingly, it is also respectfully submitted that dependent claim 20 is distinguishable from Kullik as applied by the Examiner for at least the reasons previously described. In addition, the Examiner does not appear to rely on Frank to overcome the above-described deficiencies of Kullik. Accordingly, it is also respectfully submitted that dependent claim 20 is distinguishable from the combination of Kullik and Frank applied by the Examiner, for at least the reasons previously described.

Further, new independent claim 21 recites that, in a breathing assistance device, a ventilator having at least an inlet rotor and motor is integrated into a removable module removably connectable to a breathing connection, and at least one sensor is located in the removable module "at a position downstream of the inlet rotor of the ventilator and in the vicinity of the motor of the ventilator in order to substantially prevent condensation of gas nearby said at least one sensor." (emphasis added, see specification, for example, at pg. 14, ln. 12-16). It is respectfully submitted that the references applied by the Examiner do not disclose the above described features of claim 21, such that claim 21 is distinguishable over the applied references, in any

combination.

As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he/she telephone applicant's attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

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